

chapter 3

Regulatory Processes



Regulatory Processes

Permit and Registration Office Phone Numbers

Air

New Source Review General Information (Air Permits)	512/239-1250
Initial Review	512/239-1094
Permit Renewal	512/239-1270
Permit Procedures and Forms	512/239-1262
Chemicals	512/239-1283
Chemical Exemptions	512/239-1906
Coatings	512/239-1268
Coating Exemptions	512/239-1309
Combustion	512/239-1265
Combustion Exemptions	512/239-1249
Mechanical	512/239-1274
Agricultural, Metallurgical, and Mechanical Exemptions	512/239-1299
Operating Permits	512/239-1334

Radiation

Radiation Producing Equipment	
Texas Department of Health	512/834-6688
Oil and Gas NORM Waste Disposal	
Railroad Commission	512/463-6790
Radioactive Waste Disposal	
Texas Natural Resource Conservation Commission	512/239-6065

Waste

Industrial & Hazardous Waste (IHW) Landfills	
IHW Permits	512/239-6595
Municipal Solid Waste (MSW) Landfills and Facilities	
MSW Permits	512/239-6781
Petroleum Storage Tanks (PSTs)	
PST Registrations	512/239-2160

Permit and Registration Office Phone Numbers cont'd

Waste cont'd

Solution Mining

IHW Permits 512/239-6636

Special Wastes

Waste Evaluation 512/239-6832

Stage II Vapor Recovery

PST Stage II 512/239-2039

Water

Confined Animal Feeding Operations (CAFOs) and Dairies

Agriculture & Watershed Management 512/239-4710

Certificates of Convenience and Necessity

Water Utilities 512/239-6960

Domestic or Municipal Wastewater

Agriculture & Watershed Management 512/239-4436

Public Water System Engineering Plans

Water Utilities 512/239-6960

Sewage, Sludge, and Treatment Plants

Agriculture & Watershed Management 512/239-4436

Wastewater

Agriculture & Watershed Management 512/239-4442

Water Rights

Agriculture & Watershed Management 512/239-4433

Permits, Registrations, and Authorizations-by-Rule

There are three distinct forms of authorization or approval used by TNRCC to manage activities regulated by federal or State laws: 1) individual, site-specific permits; 2) registrations; and 3) authorization-by-rule (permit-by-rule). The basic requirements for each form of approval vary, and reflect the relative threat and likely severity to human health and the environment posed by a particular activity.

Permits

Individual, site-specific permits are issued in the name of a business, government body, or person. A formal application must be submitted

to TNRCC. Site-specific engineering and environmental data and analyses are required to address specific concerns or risks. As a result, site-specific limitations and conditions may apply to an individual permit. The affected public has the opportunity to request a public hearing on most permit matters. TNRCC issues permits for various activities, including municipal solid waste landfills, sludge disposal, on-site wastewater facilities, and municipal or industrial wastewater dischargers.

Registrations

There are two types of registration. The first is a simple notification process. An entity informs TNRCC that it is engaging in a certain

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activity and will comply with required conditions necessary to protect human health, the environment, and property rights. Entities eligible for simple notification include industrial solid waste generators and transporters, and underground and aboveground storage tanks owners/operators.

The second type of registration involves a technical review and requires Agency approval before operation is authorized. Examples of registrations that require TNRCC approval include beneficial use of sludge, municipal solid waste (MSW) transfer facilities, and tire processing facilities. For more information on the type of registration required for particular activities, consult the appropriate program chapter in this Guide, or contact your Region Office.

Authorizations-by-Rule

Authorizations-by-rule (or permits-by-rule) allow certain activities by a specific rule. The rule defines the limits or conditions necessary to protect human health, the environment, or property rights. Generally, authorizations-by-rule do not require any notification to TNRCC; the entity simply engages in the activity and complies with the general prohibitions stipulated. For example, wastewater activities which are authorized by rule include relatively small confined animal feeding operations, disposal of waters generated at sand and gravel operations, and coal mining operations.

The Permit Process

One of TNRCC's principal responsibilities is to regulate emissions of air, waste, and water pollutants through its permitting processes. TNRCC urges anyone planning any activity that requires a permit or approved registration to discuss it with TNRCC staff well in advance of submitting the application. This will prevent unnecessary difficulties or the need for amendments as the project develops by allowing TNRCC staff to provide up-front assistance and recommendations as needed. For assistance, contact the program permitting staff, your Region Office, or the

Local Government Assistance Office.

Although technical requirements vary for different types of permits, the permitting process is fairly uniform (see Figure 1). Permit timeframes also vary, due to differences in the complexity of permits and public meeting/hearing requirements. The need to obtain additional information from the applicant during either the administrative or technical review process will also affect the amount of time required to process a permit. For more information on the requirements for a specific type of permit and the average processing time, contact the appropriate program permit staff listed in the preceding section.

Administrative Review

After a permit application is received by TNRCC, it is examined for administrative completeness to assure that all required documentation has been submitted. If the application is incomplete, the permit staff will send a Notice of Administrative Deficiency (NOD) requesting the missing information. The applicant is usually given 30 days from receipt of the NOD to respond.

Once the application is administratively complete, staff sends a Notice of Receipt of Application to the Chief Clerk's Office and mails copies to affected persons, state and local officials.

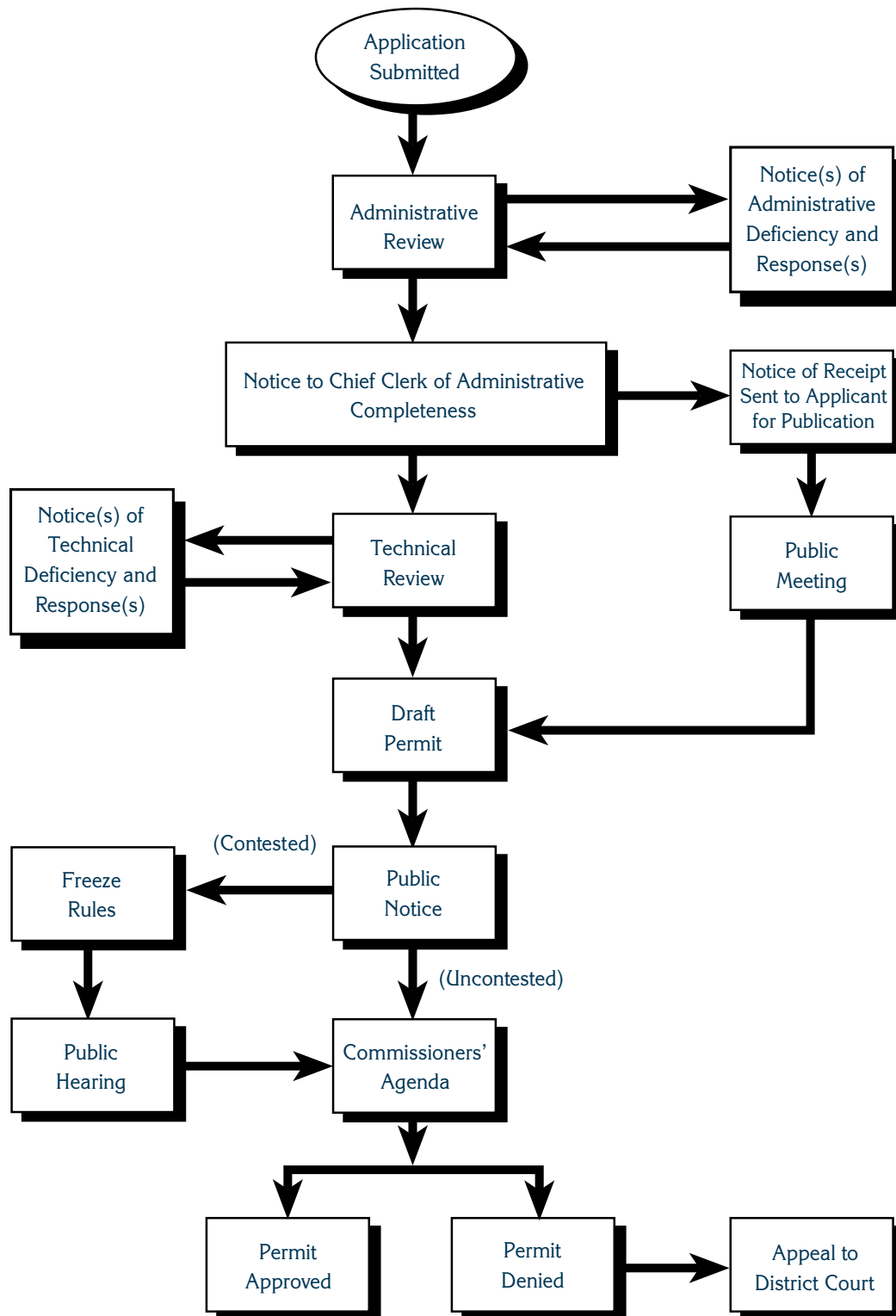
Public Meeting

A public meeting is required for certain types of permits, such as permits for municipal solid waste facilities or hazardous waste management, and some modifications to those permits. The public meeting may be held at any time during the permit process, after the application is declared administratively complete. However, it is recommended that this public meeting be held during the early stages of the permit process (concurrent with the technical review) to expedite the process.

Technical Review

Once an application is ruled administratively complete, it undergoes a technical review. The engineering staff of the appropriate program (air,

Permitting Process



waste, or water) conducts a detailed technical evaluation of the application for compliance with all germane regulations. If the application is incomplete with respect to technical requirements, a notice of technical deficiency will be sent to the applicant, requesting additional information. Since much of the information required at this stage is site-specific, staff may need to make several requests of the applicant before all the necessary scientific data is available for evaluation.

Draft Permit Issued

Once the technical review has been completed, an initial draft permit is prepared and circulated for comments by Agency staff, the applicant, and other agencies. After reviewing any comments, staff prepares a final draft permit. The final draft includes any technical provisions that the applicant must adhere to in order to retain the permit and maintain operational compliance.

Public Comment

Once the final draft is prepared, the Chief Clerk's Office publishes notice in the *Texas Register* to alert affected persons and government officials of the proposed permit. The applicant is also required to publish notice in local newspapers to inform the affected community of the proposed permit activity. Generally there is a 30 to 45-day comment period from the time the notice is published.

If no requests for a public hearing are received and Commission staff recommends approval, the Executive Director may issue final approval of the permit application.

Public Hearing

A request for a public hearing on a permit application should be filed with the Chief Clerk's Office. Once filed, a request is reviewed to determine whether the requestor qualifies as an affected party and whether the request is reasonable. If a request for a public hearing is valid, the Chief Clerk will refer the case to the State Office of Administrative Hearings (SOAH - 512/475-4993), who will assign an administra-

tive law judge (ALJ). The hearings process is described in detail in the next section.

Agenda Determination

After the public hearing, the ALJ will prepare a written proposal for decision and present it at an Agenda Meeting. The Commissioners will evaluate the proposal and make a determination on the permit. The Commissioners may postpone consideration of the permit; remand the item to the ALJ for further consideration; or vote to issue or deny the permit.

The Public Hearing Process

A public hearing may be called if there is an objection to a proposed permit or registration by TNRCC staff or other interested individuals. The major steps in the public hearing process are detailed in Figure 2. All TNRCC public hearings are conducted by the State Office of Administrative Hearings (SOAH).

Public hearings provide a significant opportunity for individuals to participate in matters directly affecting them. There are three ways for an individual to participate in a public hearing: as a party, as a witness, or through public comment.

Information on the legal terms involved and the hearings process in general can be found in the TNRCC pamphlet entitled "The TNRCC Public Hearing Process" available from the TNRCC Publications Office (512/239-0028) or the Office of Public Interest Counsel (512/239-6363). For the schedule or location of a public hearing, contact SOAH at 512/475-4993.

Preliminary Hearing

At a preliminary hearing, the administrative law judge (ALJ) will ask everyone present to register on a form which provides the ALJ with the names and addresses of everyone in attendance and their position regarding the application. The ALJ also verifies that proper notice of

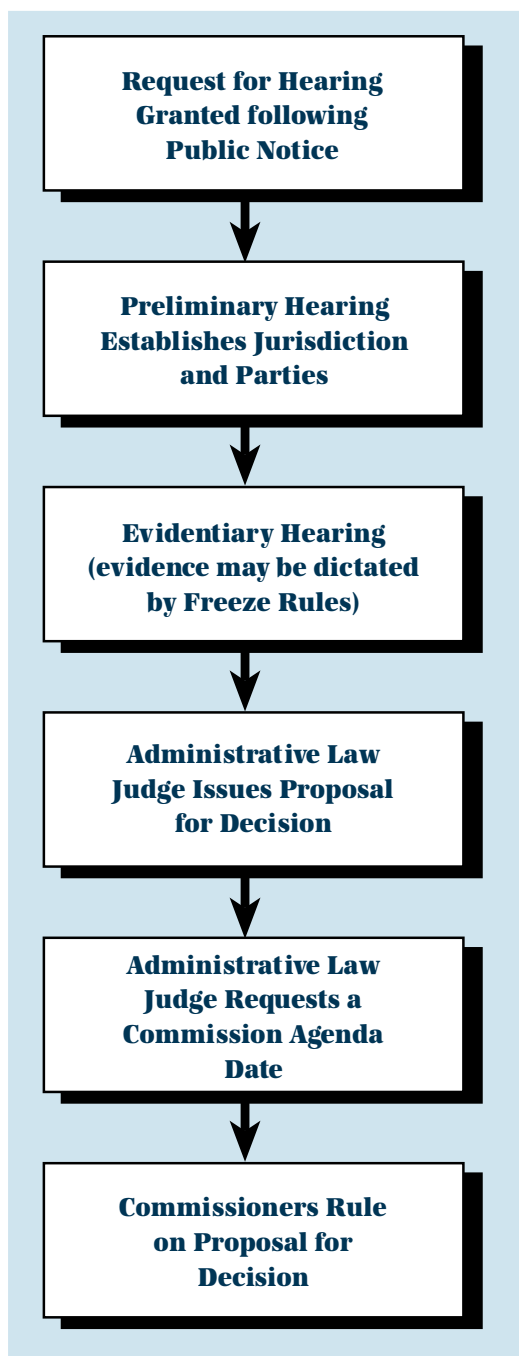
the application and hearing was provided. If notice is sufficient, the ALJ then assumes jurisdiction over the matter on behalf of the Commission.

Freeze Rules

Once a final draft permit is issued, the Agency's "Freeze Rules" (30 Texas Administrative Code, Chapter 265, Subchapter C) may apply if the parties agree to be subject to the rules and the ALJ either approves this agree-

ment, or determines that they apply for good cause. The rules require the parties to list and narrow the issues during the discovery process. Only those issues identified during the discovery process will be germane to the public hearing and the permit application. The "Freeze Rules" streamline and expedite the hearing process for complex cases, reduce the costs associated with the process, and promote certainty and fairness in the process.

Public Hearing Process



Public Comment

Once jurisdiction is established, the ALJ will allow time for those individuals who wish to comment on the application to voice their concerns. The comments during this phase of the hearing are not sworn testimony or considered as evidence and thus cannot be used as a basis for decision on the application.

Designation of Parties

The ALJ then designates parties to the proceeding. In order to be named a party, a person must attend the hearing either in person or through a designated representative, ask for party status, and show that they have a "justiciable interest" in the subject matter of the hearing. "Justiciable interest" generally means that a person will be directly affected by the permitting of a facility differently than the public at large (such as living close to the proposed facility). Parties have the right to participate fully in the hearings process by entering into settlement agreements, asking discovery questions of other parties, presenting evidence, calling witnesses, and cross-examining other parties' witnesses. It is at this stage that the Agency "Freeze Rules" may apply. Parties also have the obligation to respond to the discovery requests of other parties and attend the evidentiary hearing.

Evidentiary Hearing

During the evidentiary hearing phase the ALJ receives legally admissible evidence regarding the subject matter of the hearing. Usually, the parties have been allowed a period of discovery and time to prepare their respective

cases before this phase begins. Each party is entitled to present his/her case and to cross-examine the witnesses of the other parties. Only the evidence presented during the evidentiary hearing (the “hearing record”) can be considered by the ALJ when making a recommendation for a final decision to the Commission.

After the Hearing

After the evidentiary hearing is concluded, the parties may present a summary of their positions regarding the application to the ALJ in “Closing Arguments.” The ALJ will review the evidence and arguments and issue a Proposal for Decision, recommending a course of action to the Commissioners. The Proposal for Decision is considered by the Commission at a subsequent Agenda Meeting where final action may be taken on the application. The law provides for reconsideration of Commission action and, ultimately, appeal of a Commission decision by a party to a proceeding. Appeals are filed with the Travis County District Court.

The Agenda Process

The TNRCC Commissioners meet weekly in an open forum known as the “Agenda” or “Agenda Meeting” to consider and act on matters within the regulatory jurisdiction of the Commission.

Preparing the Agenda

The Chief Clerk’s Office receives requests for agenda settings from authorized Agency personnel or the State Office of Administrative Hearings (SOAH). SOAH submits requests (Administrative Law Judges’ Proposals for Decision) for agenda settings on cases which have had public hearings.

The Chief Clerk compiles and distributes a list of all the agenda items (also known as the agenda listing), coordinates the Agenda Meeting and submits the Agenda to the *Texas Register* every Friday for publication in accordance with the Open Meetings Act.

The TNRCC office that initiates a request to

set an item on an Agenda is also responsible for notifying all parties involved with that item of the agenda date and the action to be considered by the Commission. Party notification should occur not less than ten days prior to the agenda date. Parties who wish to address the Commissioners or who anticipate that their attendance at the agenda could contribute towards resolution of the pending action should attend the meeting.

The Agenda Meeting

The Chairman of the Commission conducts the Agenda Meeting. The TNRCC program staff, Legal Division staff and staff from SOAH present the agenda items to the Commissioners for consideration. Persons attending the Agenda meeting can register to speak on any item on the Agenda, whether that item is contested or uncontested. As the agenda items are presented to the Commissioners, the Chairman asks persons who wish to address an item to come forward to the speaker’s podium. Each speaker is allowed three minutes.

After all parties to an item have had an opportunity to present comments and any questions from the Commissioners to staff have been answered satisfactorily, the Commissioners vote on the action they will take. This procedure is repeated for each item, until all items on the Agenda have been considered and the meeting is adjourned. Parties who are unable to attend a scheduled Agenda but wish to address the Commission concerning a pending action, should contact TNRCC staff who notified them of the Agenda date.

Time and Location

The Agenda generally takes place each Wednesday at 9:30 AM in Austin at Building E Room 201S, 12118 N. Interstate 35, unless otherwise stated in the Texas Register. Registration takes place in the same room, between 8:45 AM to 9:30 AM prior to each Agenda. All registrants will be asked if they wish to address the Commission.

For more information call:

Chief Clerk’s Office 512/239-3300
Agenda Coordinator 512/239-3317

The Inspection Process

TNRCC conducts inspections of facilities to ensure that the storage, transportation and treatment of solid waste, water, and wastewater and air quality are in compliance with applicable federal and State requirements.

An inspection of a facility may be scheduled for several reasons:

- ▼ Routine periodic assessment to ensure a facility is operating in compliance with rules and regulations;
- ▼ “For cause” as the result of a complaint received by TNRCC;
- ▼ Request for assistance from another agency; or
- ▼ Because a facility has a history of non-compliance.

Announced inspections involve advance notification by correspondence or telephone. Unannounced inspections do not require any prior notification to the facility.

TNRCC inspectors are authorized by federal or State law to:

- ▼ Enter any establishment or other place where the storage, transportation and/or treatment of water and/or waste is or has been generated, stored, treated, disposed of, handled, or transported;
- ▼ Access and copy all records related to such activities;
- ▼ Obtain samples of air, water, waste or soil; and
- ▼ Document observations made during inspections.

TNRCC inspectors must:

- ▼ Present identification to management, or an on-site representative;
- ▼ Enter the establishment at a reasonable time (typically normal business hours) and complete the inspection in a timely manner;
- ▼ Provide a duplicate (split) sample to the facility if requested; and
- ▼ Furnish a copy of any sample analysis if requested.

Steps taken by an inspector to prepare for an inspection include:

- ▼ Review the facility file and other background information;
- ▼ Coordinate with other TNRCC sections and/or agencies; and
- ▼ Identify and assemble inspection and safety equipment.

An inspection consists of five major components: arrival and consent, opening conference, review of records, visual inspection of the facility, and an exit interview. An inspection is generally conducted in the following manner.

Arrival and Consent

The inspector will present credentials to the management or person in charge and state the purpose of the inspection. The owner/management will then give consent to the inspection. Refusal is a violation that may be subject to a penalty of up to \$10,000 per day, and may prompt the issuance of a warrant to obtain entry to conduct or complete an inspection.

Opening Conference

The inspector will:

- ▼ Outline inspection objectives;
- ▼ Provide information on applicable federal and State regulations;
- ▼ Obtain a more detailed understanding of the facility’s operation;
- ▼ Establish the order of the inspection;
- ▼ Establish meeting schedules; and
- ▼ Set up an exit conference.

Review of Records

The inspector may examine records, documents, plans and reports that are required according to the type of facility that is being inspected. The inspector will pay particular attention to:

- ▼ Recordkeeping;
- ▼ Personnel Training Records;
- ▼ Contingency Plans; and
- ▼ Specific Operating Records.

Visual Inspection of Facility

A tour of the facility gives the inspector a better understanding of its operation. The inspector may check any area of the facility for compliance with federal and state regulations and may determine the need for sampling and identify sampling points. The inspector may also note any other activities or conditions that are deemed important for program compliance and appropriately handle claims of confidentiality or proprietary process. Before departing, the inspector may take photographs to better document any aspect of the inspection, or facility conditions.

Exit Interview

At the conclusion of the inspection the inspector will:

- ▼ Discuss the nature of any noted violation(s);
- ▼ Discuss the corrective action necessary to bring the facility into compliance; and
- ▼ Discuss the possible course of action to be taken by TNRCC.

This may include no action, the issuance of a Notice of Violation by the Region Office or referral of the case to TNRCC Central Office for consideration of formal enforcement action.

The inspector's function is to observe and evaluate compliance. The overall compliance or non-compliance status of the facility is not determined until after review of the inspection results by supervisory personnel and issuance of the inspection report.

The Enforcement Process

To ensure that all Texans enjoy a quality environment and a robust economy, the TNRCC enforcement process must be cogent, reasonable, and responsive to the regulated community's efforts to comply with state regulations. In most instances, TNRCC will offer technical assistance and management guidance in assisting any facility's progress toward compliance.

Some violations mandate specific actions by state statute and do not allow TNRCC any flexibility in the enforcement process. The most notable violations in this class are those impacting air quality regulations. The Texas Legislature has specified the enforcement actions that are to be pursued in these circumstances, and stipulated strict deadlines for attaining compliance once a violation has been noted. If the facility fails to achieve compliance, TNRCC is required to initiate legal enforcement actions and administrative penalties. In situations where a facility has been notified of an air violation, it should contact the Air Program at the Region Office (refer to Chapter 1) or Air Enforcement (512/239-3403) immediately for assistance.

The following steps describe the basic enforcement process and are outlined as Figure 3. For more information on program enforcement activities refer to the specific program chapter or contact your TNRCC Region Office (refer to Chapter 1).

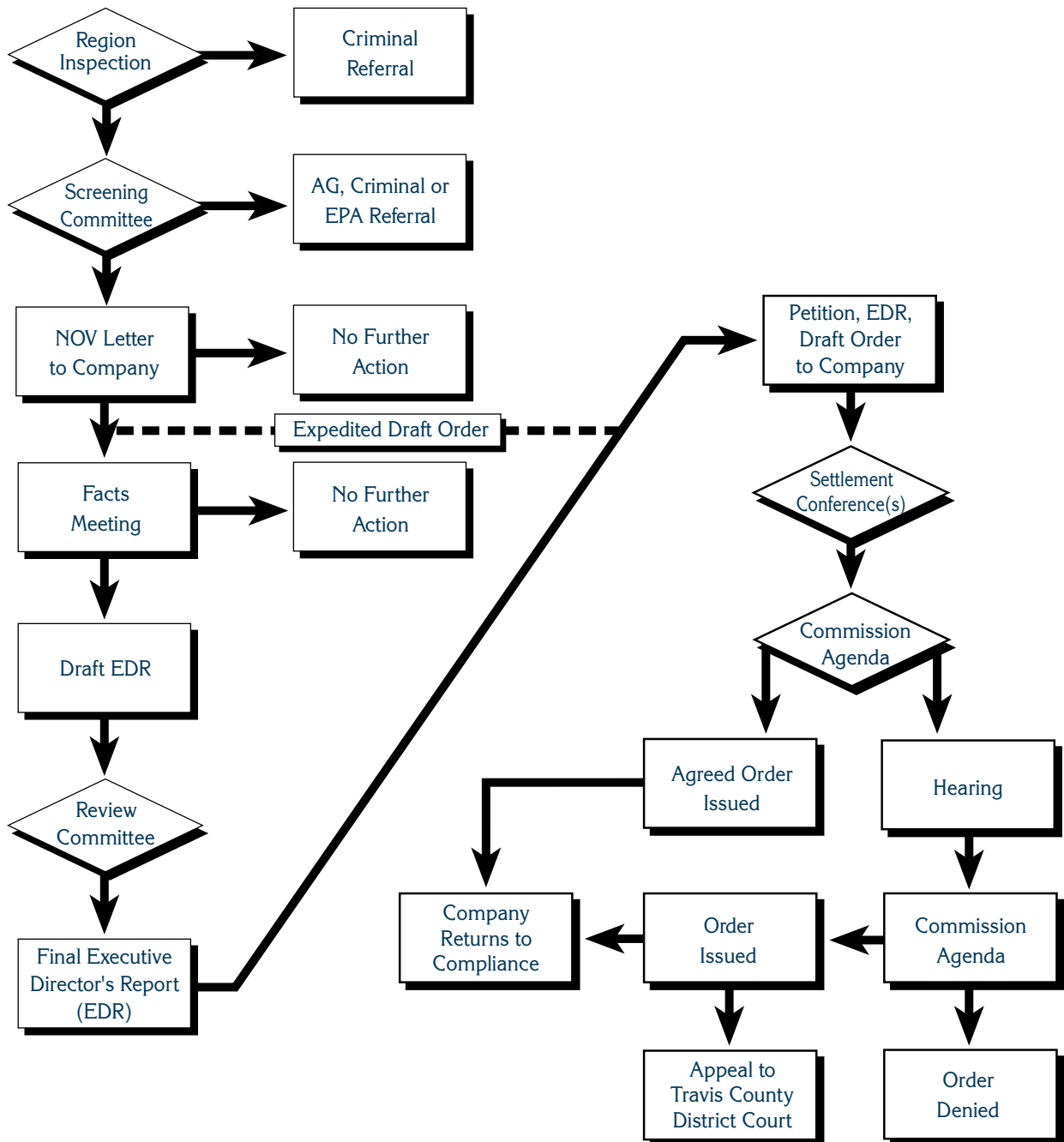
Inspection

The enforcement process usually begins with an inspection conducted by a field inspector from one of the 15 Region Offices. After completing the inspection, the inspector will conduct an exit interview with the facility manager. If violations were found the inspector will explain the next step in the enforcement process.

Notice of Violation

The inspector will carefully review all the information gathered during the inspection and generally will send the facility a Notice of Violation (NOV) letter, usually within 30 days from the date of inspection. If the violations are not serious, the letter will inform the facility of the violations that the inspector found, the actions required to correct the violations and a timeframe to complete those actions. If the facility complies with the NOV, then referral to the Central Office for formal enforcement will not be pursued.

Enforcement Process



Central Office Screening

If the facility does not complete the requested actions or if the original violations are serious, then the matter may be referred to a Screening Committee at TNRCC Central Office in Austin.

Second Notice of Violation

After the Screening Committee reviews the referral from the Region to confirm the violation(s), the matter is assigned to an enforcement coordinator. The coordinator may send a NOV letter requesting information, wait for a response from the facility and then review any evidence presented by the facility. A facts meeting may be arranged between TNRCC and the facility to resolve basic misunderstandings.

Administrative Order

If the violations are determined to be valid, the enforcement coordinator will prepare a package of information to be sent to the facility (usually including a proposed order) which explains the facility's legal rights, lists violations which have occurred, sets a penalty amount for the violations if necessary, and requires certain actions to be taken by the facility. The facility has the option of signing the proposed order and returning it to the Agency within 20 days. If the facility thinks the proposed order is inaccurate or unfair, a settlement conference will be set up at a mutually convenient time to discuss the facility's concerns.

Agenda

Once an agreement has been reached with the facility and an agreed order has been signed, the matter will be set for consideration on one of the Agency's upcoming agendas presided over by the TNRCC Commissioners. The enforcement coordinator and/or the Agency's legal counsel will present a short synopsis of the agreed order to the Commissioners, who will then vote on issuing the order. If no agreement can be reached with the facility, the Commissioners will vote on sending the matter for an evidentiary hearing on the merits of the case. The facility's representative is not required to attend the agenda meetings.

If the Commission approves an order, failure by a facility to comply with the conditions of the order will result in a referral to the Attorney General's Office.

Penalties

The need to seek penalties is addressed on a case-by-case basis, unless mandated by law. As a general policy, TNRCC prefers that violators invest in activities that will enhance environmental protection, rather than paying administrative fines. Penalties may be appropriate in cases of repeated violations or gross negligence.

The TNRCC also offers some violators the option of funding environmental projects that provide benefits beyond those required by rule or statute, in lieu of paying partial or full administrative penalties. For more information on Supplemental Environmental Projects, call 512/239-3100.

Effective September 1, 1995, TNRCC air, water, and waste enforcement functions will be consolidated into one division within the Office of Compliance and Enforcement. Currently each program has its own enforcement section or division. This restructuring is designed to maximize resources and to ensure proper coordination and consistency in enforcement actions. Enforcement staff telephone numbers are listed in this manual within the air, water, and waste programs because physical relocation of enforcement staff to a single location will be accomplished gradually over time.

The Rulemaking Process

The Texas Natural Resource Conservation Commission (TNRCC) has statutory authority to adopt rules necessary to carry out its powers and duties. The Office of Policy and Regulatory Development (OPRD) has been charged with oversight and management of the Commission's rulemaking process. Once adopted, TNRCC Rules become a part of the Texas Administrative Code, Title 30 (30 TAC).

Although rulemaking may vary at times, it generally adheres to the process described below. For more information on specific rules that may be under development, contact OPRD at 512/239-4900.

Petition for Rulemaking

Any interested person may petition the Commission to request the adoption of a new rule or changes to a current rule. Petitions must be submitted in writing to the Executive Director and must comply with the following requirements:

- ▼ A separate petition is required for each rule request;
- ▼ Each petition should state the name and address of the petitioner;
- ▼ Each petition should include:
 - 1) A brief explanation of the proposed rule or rule changes;
 - 2) The text of the proposed rule or changes. When changes to a current rule are proposed, the words to be added or deleted from the current text should be indicated;
 - 3) The statutory or other authority under which the rule is to be promulgated; and,
 - 4) An allegation of injury or inequity which could result from failure to adopt the proposed rule.

Questions regarding petitions for rulemaking should be directed to OPRD at 512/239-4900. Petitions for Rulemaking should also be mailed to the attention of OPRD.

Within 60 days after submission of a petition, the Commission will consider the petition at an Agenda meeting and shall either deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with the Administrative Procedures Act. A petition for rulemaking may be denied for failure to comply with the submittal requirements outlined above.

Proposal for New Rules

Rulemaking is typically initiated due to new federal mandates, state law, petitions for rulemaking, or Commission directives. The TNRCC follows set procedures in the development and approval of a proposed rule or rule change. A concept paper describing the reasons for and scope of a proposed new rule is prepared by staff. Each concept paper is reviewed by TNRCC staff at bi-monthly rules meetings.

Draft Rules

If the proposal is approved, an Agency rulemaking team is formed to coordinate the rule's development with internal and external stakeholders. This team will draft the proposed rule and preamble, and complete a fiscal impact statement.

Public Notice

All state rulemaking proposals must be submitted to the Secretary of State for publication in the *Texas Register* in order to allow affected parties an opportunity to review and comment on the proposed rules. Major proposed rules are often presented to the Commission informally during an agenda to provide for discussions at that intermediate stage.

Public Comment

Upon publication, a "comment period" is established, during which interested parties may comment on the proposed rule either in writing, by mail, fax, or e-mail, or in person at a public hearing held by staff from the rulemaking team. The "comment period" is usually open for 30 days.

Revisions to Draft Rules

After the close of the "comment period", the rulemaking team will analyze all comments and make appropriate revisions to the proposed rule. Once the TNRCC staff has reviewed the revised draft rule, the final draft rule package is sent to the Chief Clerk's Office.

Adoption by the Commission

The Chief Clerk places the item on the next available Commission Agenda. The Commissioners consider the rule at a public meeting, where staff present the proposal and the public has the opportunity to comment again. The Commissioners vote to either:

- ▼ Adopt the rules;
- ▼ Continue the item for consideration at a future Agenda;
- ▼ Remand the proposal back to staff for revisions; or
- ▼ Withdraw the proposal.

If the Commissioners adopt the rule, it is filed with the Secretary of State for publication, and becomes effective 21 days later.